

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 135 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?No

2. To be referred to the Reporter or not?  
No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

R.RADHAKISHAN,MANAGER  
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Appearance:

Mr.S.A. Pandya, APP, for appellant

Mr. R. Radhakisan-party-in-person- Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 23/02/98

ORAL JUDGEMENT

The State Gujarat has filed this appeal under Section 377 of the Code of Criminal Procedure, 1973, ('Code' for short) for enhancement of sentence imposed vide order dated January 10, 1989 by the learned Judicial Magistrate, First Class (Municipal), Vadodara, in Criminal Case No.8824 of 1988. By order dated January 10, 1989, the learned Magistrate has imposed fine of Rs.5000/- on the respondent for the offence punishable under Section 92 of the Factories Act, 1948 ('Act' for short).

The case of the prosecution is that the respondent herein was working as Manager in Jim Chemical

Industries Private Limited. That, on September 9, 1998, Shri B.G. Zala, Factory Inspector, at Baroda, went to the factory, Jim Chemical Industries Private Limited, where Bhupendra Bahadur Ramsing had met with the accident. He inquired with several workers. During the enquiry he found that centrifuse machine basket gave way during the manufacturing operation as a result Bhupendrakumar sustained injury on his head and abdomen and succumbed to the injury on that day. It was also found that the respondent had not provided safety measures and thereby he had committed the breach of Section 21(1)(4)(c) of the Act. He, therefore, prepared necessary papers and filed complaint before the Court of the Judicial Magistrate (First Class), at Baroda, which came to be registered as Criminal Case No.8824 of 1988. The learned Magistrate took the case on hand for effective hearing. He took the plea and explained the accusations to the respondent. The respondent then pleaded guilty voluntarily. Accepting the plea of guilt made voluntarily, the learned Magistrate held the respondent guilty and sentenced him as aforesaid. Being aggrieved by the lenient sentence awarded, the State has filed this appeal for enhancement of sentence.

On behalf of the appellant, it is submitted by learned APP, Mr. S.A. Pandya, that, when the factory owners or industrialists employ workers, they are under obligation to provide safety measures and worker should not be left to their fate. It is further submitted by learned APP that in the present case, the Manager has not provided safety measures to the worker, as a result of which the worker died on September 9, 1988. It is further submitted by the learned APP that, as per the proviso to Section 92 of the Act, if contravention of any of the provisions of Chapter IV has resulted in an accident causing death, the fine shall not be less than Rs.25,000.00

I have heard the respondent who has appeared in person.

In this case, the respondent pleaded guilty to the charge. The learned Magistrate finding this plea of guilt as voluntary, imposed fine of Rs.5000/- and ignoring that minimum fine for the accident causing death is Rs.25,000.00. The respondent was, of course, ignorant about plea bargaining. In such case if the State prefers the appeal for enhancement, what should be the approach of the appellate court has been made clear by the Supreme Court in the case of Thippeswamy vs. State of Karnataka, AIR 1983 Supreme Court 747. It is laid down that, if by

reason of plea bargaining the accused pleads guilty, and then the State prefers the appeal for enhancement, it is certainly unreasonable, unfair and unjust and it would be clearly violative of Article 21 of the Constitution. One cannot induce or lead the accused to plead guilty under a promise or assurance on a plea that leniency would be shown or that he would be let off lightly, and if thereafter the appeal is preferred for enhancement the Court of appeal should in such case set aside the conviction and sentence and remand the case to the trial court so that the accused if he so wishes defend himself against the charge and if he is found guilty, adequate sentence can be passed against him, and if not, he will be acquitted. In view of such law made clear by the Apex Court, in this case, the only course open to me is to set aside the conviction and sentence inflicted by the lower court and remand the matter for retrial.

In the result, the judgment and order of conviction and sentence passed in Criminal Case No.8824 of 1988 are hereby set aside and the Case is remanded to the lower court for hearing afresh in accordance with law. Fine if paid be refunded. The appeal stands disposed of accordingly.

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(swamy)